IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Robert W. Fransdonk	Examiner: Aung Win
Serial No.:	10/665,333	Group Art Unit: 2617
Filed:	September 18, 2003	Docket: 2059.029US1
Title:	METHOD AND SYSTEM TO MONITOR DELIVERY OF CONTENT TO A CONTENT DESTINATION	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

In response to the Final Office Action mailed October 18, 2007, Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested for the reason(s) stated below:

This response is accompanied by a Petition, as well as the appropriate fee, to obtain a 2-month extension of the period for responding to the Office action, thereby moving the deadline for response from January 18, 2008 to March 18, 2008.

C.1 The Rejection of claims 1-36 under § 103

Appellant respectfully submits that a *prima facie* case of obviousness of claims 1-36 has not been established because Lagerweij and Seago fail to disclose all elements of the present claims.

In particular, Appellant cannot find in the cited portions of Lagerweij or Seago any disclosure, teaching, or suggestion of "access rights of the content consumer are updated with delivered time data in response to a delivered time during which the content was delivered to the content consumer," as recited in claim 1 and similarly recited in independent claims 17, 28, 35 and 36.

Instead, Lagerweij is apparently related to a "system for providing access to and delivery of content."[1] This system incorporates a "URL that comprises access right data."[2] As stated in

[1] Lagerweij at ¶ [0010].
[2] Lagerweij at ¶ [0040].

Lagerweij: "Re-directing of the user device 4 to the content server 3 is the sole relevant function of the URL."[3] Thus, it appears that in Lagerweij, access rights assignment is only performed when a user requests content via the URL. Consequently, Lagerweij cannot reasonably be considered to disclose updating access rights stored at a digital rights server, as described in independent these claims.

The Final Office Action refers to paragraph 0048 of Lagerweij in an attempt to illustrate Appellant's claimed language.[4] In particular, the relevant portion of paragraph 0048 states: "If a duration or expiration is defined in the data-string the assessment module will close the content stream 8 to the user device 4 accordingly."[5] However, the "duration or expiration" is apparently referring to Lagerweij's business rules regarding when or for how long a user may access content via a URL. In particular, Lagerweij describes several examples, such as:

> A business rule may e.g. related to content ***duration***, i.e. access to a content stream 8 is allowed only for a limited time, after which access is blocked. One could grant a user employing a user device 4 access to a content stream 8 for the next 12 hours for example. The duration can be specified on a per second base, so pay per minute is perfectly possible. Another business rule may relate to content ***expiration***, i.e. access to the content stream 8 is or can be allowed till a predefined point in time. One could grant an end-user employing a user device 4 access to the content stream 8 till for example 12 Sep. 2002, 12:45 PM.[6]

(emphasis added). Thus, Lagerweij's reference to "duration or expiration" in paragraph 0048 is apparently referring to the functionality of providing an indication of when, or for how long, access is available to a user in a URL string, which may then be referenced by the assessment module, which can block access if the access right has expired. This is distinctly different from timing the delivery of content and then updating access rights of the content consumer using the ***delivered time data***, as recited in the present claims.

The Final Office Action attempts to make a point in stating that "Lagerweij discloses [an] assessment module of the content server [that] controls the content delivery by allowing [a] user

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[3] Lagerweij at ¶ [0034].
[4] Final Office Action of October 18, 2007 at p. 2.
[5] Lagerweij at ¶ [0048].
[6] Lagerweij at ¶ [0040]

to access the content for a limited time ... after which access is blocked, it is obvious ... that the content server must have [a] timing mechanism to determine content delivery time."[7] However, this is not necessarily how the assessment module *must* work, as the Final Office Action asserts. In particular, Lagerweij's assessment module may merely require access to a clock, which it may then use to compare with an expiration time embedded in the URL data-string, to determine whether access to the content should be granted. As another illustrative example, Lagerweij may contemplate buffering some or all of the delivered content in a player program (e.g., Windows Media Player) as a result of the URL activation, where the user may, independent from the content server, pause, stop, or restart the content playback. Whatever the case, there is clearly no need, and in fact no description, teaching, or suggestion, that Lagerweij requires a "timing mechanism to determine content delivery time," as the Final Office Action asserts.

Furthermore, although Lagerweij includes "the user is allowed to stop, pause and restart a stream without losing the rights to the remaining time to watch,"[8] Lagerweij does not disclose updating access rights with delivered time data. In fact, updating access rights with delivered time data is not necessary to stream digital content such as video for a "football match" where there is "allowance of start/stop and pause of the content stream."[9] For example, one could merely incorporate a time marker to indicate the point in time where the broadcast was paused or stopped, allowing the broadcast to continue at the appropriate point when restarted. Alternatively, as described above, a player program may be used to permit the user to pause, stop, or start the stream. Therefore, Lagerweij fails to disclose or suggest at least the feature of "access rights... are updated with delivered time data in response to a delivered time," as recited in these claims.

Seago refers to "a digital content provisioning system,"[10] wherein "client rights profiles" are updated based on billing status[11] or user requests[12]. Additionally, Seago refers to a "carrier mechanism... to update the client rights profiles, such as by terminating a license for non-

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[7] Final Office Action of October 18, 2007 at p. 3.
[8] Lagerweij at ¶ [0040].
[9] Lagerweij at ¶ [0040].
[10] Seago at Abstract.
[11] Seago at ¶ [0038].
[12] Seago at ¶ [0040].

payment."[13] In contrast, claim 1 recites, "access rights… are updated *with delivered time data in response to a delivered time.*" While Seago discloses, "updating as necessary… the client rights profiles"[14], these updates are apparently merely based on billing, user requests or license termination – not updating access rights with delivered time data. Therefore, because Seago narrowly discloses billing, user request and license updates, it does not disclose or suggest, whether considered separately or in combination with Lagerweij, "access rights … updated with delivered time data in response to a delivered time," as recited in these claims.

In summary, Lagerweij and Seago, either alone or in combination, fail to teach delivered time data or ""access rights… are updated *with delivered time data in response to a delivered time.*" Accordingly, Appellant respectfully submits that claims 1, 17, 28, 35, and 36 are patentable in view of the combination of Lagerweij and Seago and should be allowed.

Furthermore, Appellant respectfully submits that claims 2-16, 18-27, and 29-34 depend directly or indirectly on independent claims 1, 17, and 28, respectively. As such, these dependent claims incorporate all the limitations of their parent independent claims. Accordingly, Appellant submits that these dependent claims are patentable for at least the reasons set forth above. Thus, Appellant respectfully requests withdrawal of any basis of rejection of claims 2-16, 18-27, and 29-34.

[13] Seago at ¶ [0042].
[14] Seago at ¶ [0042].

CONCLUSION

Applicant respectfully submits that all of the pending claims are in condition for allowance, and such action is earnestly solicited. The Examiner is invited to telephone the below-signed attorney at 408-278-4042 to discuss any questions which may remain with respect to the present application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402
408-278-4042

Date 18 March 2008 By / /
John I. Fischer
Reg. No. 60,900

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 18th, day of March 2008.

Dawn R. Shaw — Dawn R. Shaw

Name Signature